

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDREW E. WARRINGTON,	§
	§ No. 34, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr.ID No. 0008014979
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 4, 2005

Decided: January 24, 2006

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices

ORDER

This 24th day of January 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Andrew E. Warrington, filed an appeal from the Superior Court's January 6, 2005 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In November 2001, Warrington was found guilty by a Superior Court jury of Murder in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, and Conspiracy in the First Degree. He

was sentenced to life imprisonment plus 25 years. Warrington's convictions and sentences were affirmed by this Court on direct appeal.¹

(3) In this appeal, Warrington claims that: a) the Superior Court abused its discretion by refusing to appoint counsel to represent him in the postconviction proceeding; b) his trial counsel provided ineffective assistance by failing to investigate the basis for the indictment, move for a change of venue, move to sever his trial from that of his co-defendant brother, move to suppress his statements to police, object to the State's expert testimony, and make appropriate arguments to the jury; c) his indictment was defective because tainted evidence was presented to the grand jury; d) he was denied his right to testify before the grand jury; e) he was the victim of a vindictive prosecution; f) there was insufficient evidence presented at trial to support his convictions; g) exculpatory evidence was illegally withheld by the State; and h) inadmissible hearsay was admitted into evidence at trial.

(4) Warrington's first claim is that the Superior Court abused its discretion by refusing to appoint counsel to represent him in the postconviction proceeding. A defendant does not have a right to the

¹ *Warrington v. State*, 840 A.2d 590 (Del. 2003).

appointment of counsel in postconviction proceedings.² Counsel will be appointed only for good cause shown.³ In this case, the Superior Court held an evidentiary hearing on Warrington's postconviction motion solely to clarify his claims and his trial counsel's affidavit. Based upon the evidence presented, the Superior Court confirmed that there was no factual basis for any of Warrington's claims. In the absence of a showing of "good cause," we find that the Superior Court acted within its discretion in determining that there was no need to appoint counsel for Warrington in that proceeding.

(5) Warrington's second claim is that his trial counsel provided ineffective assistance. In order to prevail on this claim, Warrington must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that, but for his counsel's unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁴ Although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that the representation was professionally reasonable."⁵ Our review of the record does not support Warrington's claim of ineffective assistance. He has not

² *Cropper v. State*, Del. Supr., No. 309, 2001, Walsh, J. (Dec. 10, 2001) (citing *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987)).

³ Super. Ct. Crim. R. 61(e) (1).

⁴ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁵ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

demonstrated that any alleged error on the part of his counsel resulted in prejudice to him.

(6) Warrington next claims that the indictment handed down by the grand jury was defective because it was based upon tainted evidence. Specifically, he argues that he was under the influence of marijuana when he gave his statement to the police, there were irregularities in the collection and preservation of the evidence, and he was denied his right to testify before the grand jury. Because this claim was never raised in the proceedings leading to the judgment of conviction, it is barred⁶ unless Warrington can establish cause for the procedural default and prejudice.⁷ The record in this case does not support Warrington's claim of irregularities in the evidence presented to the grand jury. Moreover, no defendant has a right to testify before the grand jury.⁸ As such, Warrington has failed to overcome the procedural bar and his claim must be denied.

(7) Next Warrington claims, for the first time in this proceeding, that he was the victim of a vindictive prosecution. He contends that the prosecutors turned his acts of self-defense into a murder charge when they learned that he and his co-defendant brother were drug dealers and users.

⁶ Super. Ct. Crim. R. 61(i) (3).

⁷ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

⁸ *Steigler v. Superior Court*, 252 A.2d 300, 304 (Del. 1969).

This claim is procedurally barred⁹ as there is no evidence in the record of any vindictive or improper motive on the part of the prosecution.

(8) Warrington's next claim, which he also raises for the first time in this proceeding, is that there was insufficient evidence presented at trial to support his convictions. In reviewing a claim of insufficiency of the evidence, this Court must determine whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.¹⁰ In so doing, we make no distinction between direct and circumstantial evidence.¹¹ Moreover, it is for the jury to weigh the relative credibility of the witnesses and reconcile any conflicting testimony.¹² The record in this case reflects that there was ample evidence presented at trial to support Warrington's convictions of Murder in the First Degree,¹³ Possession of a Deadly Weapon During the Commission of a Felony,¹⁴ and Conspiracy in the First Degree.¹⁵ In the absence of any evidence of cause and prejudice,¹⁶ this claim, too, is procedurally barred.

⁹ Super. Ct. Crim. R. 61(i) (3).

¹⁰ *Barnett v. State*, 691 A.2d 614, 618 (Del. 1997).

¹¹ *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

¹² *Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

¹³ Del. Code Ann. tit. 11, § 636.

¹⁴ Del. Code Ann. tit. 11, § 1447.

¹⁵ Del. Code Ann. tit. 11, § 513.

¹⁶ Super. Ct. Crim. R. 61(i) (3) (A) and (B).

(9) Warrington's final two claims, also raised for the first time in this proceeding, are that exculpatory evidence was improperly withheld by the State and that inadmissible hearsay in the form of testimony by a DNA expert was admitted at trial. Our review of the record does not reflect any factual basis whatsoever for these assertions. As such, Warrington's final two claims also must be denied.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice